

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL PORTUGAL,	)	
	)	
Plaintiff(s),	)	No. C 08-0276 CRB (PR)
	)	
v.	)	ORDER OF SERVICE
	)	
N. GRANNIS, et al.,	)	
	)	
Defendant(s).	)	

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Plaintiff, a prisoner at Salinas Valley State Prison ("SVSP"), has filed a pro se civil rights complaint for damages under 42 U.S.C. § 1983 alleging that SVSP dentists Wittenberg, Major and Pina "botched" several dental surgical procedures on him and that his pleas for adequate dental care to other prison officials were to no avail.

### DISCUSSION

#### A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be

granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

#### B. Legal Claims

Deliberate indifference to serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976). Liberally construed, plaintiff's allegations of inadequate care for his dental needs states a cognizable § 1983 claim for damages against the named defendants. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir. 1989) (dental care is an important medical need of inmates).

### CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall issue summons and the United States Marshal shall serve, without prepayment of fees, copies of the complaint in this matter, all attachments thereto, and copies of this order on the following defendants: N. Grannis (CDCR, Sacramento); Dr. Major (SVSP); Dr. Nguyen (SVSP); Dr. Adamo (SVSP); Dr. Wittenberg (SVSP), Dr. Charles Lee (SVSP) and Dr. Pina (SVSP). The clerk also shall serve a copy of this order on plaintiff.

2. In order to expedite the resolution of this case, the court orders as follows:

a. No later than 90 days from the date of this order, defendants

1 shall file a motion for summary judgment or other dispositive motion. A motion  
2 for summary judgment shall be supported by adequate factual documentation and  
3 shall conform in all respects to Federal Rule of Civil Procedure 56, and shall  
4 include as exhibits all records and incident reports stemming from the events at  
5 issue. If defendants are of the opinion that this case cannot be resolved by  
6 summary judgment or other dispositive motion, they shall so inform the court  
7 prior to the date their motion is due. All papers filed with the court shall be  
8 served promptly on plaintiff.

9 b. Plaintiff's opposition to the dispositive motion shall be filed  
10 with the court and served upon defendants no later than 30 days after defendants  
11 serve plaintiff with the motion.

12 c. Plaintiff is advised that a motion for summary judgment  
13 under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your  
14 case. Rule 56 tells you what you must do in order to oppose a motion for  
15 summary judgment. Generally, summary judgment must be granted when there  
16 is no genuine issue of material fact--that is, if there is no real dispute about any  
17 fact that would affect the result of your case, the party who asked for summary  
18 judgment is entitled to judgment as a matter of law, which will end your case.  
19 When a party you are suing makes a motion for summary judgment that is  
20 properly supported by declarations (or other sworn testimony), you cannot simply  
21 rely on what your complaint says. Instead, you must set out specific facts in  
22 declarations, depositions, answers to interrogatories, or authenticated documents,  
23 as provided in Rule 56(e), that contradicts the facts shown in the defendant's  
24 declarations and documents and show that there is a genuine issue of material  
25 fact for trial. If you do not submit your own evidence in opposition, summary  
26 judgment, if appropriate, may be entered against you. If summary judgment is  
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1 granted, your case will be dismissed and there will be no trial. Rand v. Rowland,  
2 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App A).

3 Plaintiff is also advised that a motion to dismiss for failure to exhaust  
4 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your  
5 case, albeit without prejudice. You must “develop a record” and present it in  
6 your opposition in order to dispute any “factual record” presented by the  
7 defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120  
8 n.14 (9th Cir. 2003).

9 d. Defendants shall file a reply brief within 15 days of the date  
10 on which plaintiff serves them with the opposition.

11 e. The motion shall be deemed submitted as of the date the  
12 reply brief is due. No hearing will be held on the motion unless the court so  
13 orders at a later date.

14 3. Discovery may be taken in accordance with the Federal Rules of  
15 Civil Procedure. No further court order is required before the parties may  
16 conduct discovery.

17 4. All communications by plaintiff with the court must be served on  
18 defendants, or defendants' counsel once counsel has been designated, by mailing  
19 a true copy of the document to defendants or defendants' counsel.

20 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must  
21 keep the court and all parties informed of any change of address and must comply  
22 with the court's orders in a timely fashion. Failure to do so may result in the  
23 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

24 SO ORDERED.

25 DATED: May 27, 2008

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CHARLES R. BREYER  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL PORTUGAL,  
Plaintiff,

Case Number: CV08-00276 CRB

**CERTIFICATE OF SERVICE**

v.

N GRANNIS et al,

Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 27, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Daniel Portugal V 51068  
Salinas Valley State Prison  
D9-144  
P.O. Box 1050  
Soledad, CA 93960-1050

Dated: May 27, 2008

Richard W. Wieking, Clerk  
By: Barbara Espinoza, Deputy Clerk